

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 25, 2013

Elisabeth A. Shumaker
Clerk of Court

MA'ALUUM ABDULLAH, a/k/a Todd
Cooks,

Plaintiff - Appellant,

v.

JUSTIN JONES, Director DOC, in his
individual and official capacity; DEBBIE
MORTON, Director's Designee, in her
individual and official capacity;
MICHAEL DUNKLE, Southeast District
Supervisor, in his individual capacity;
OFFICER BUSWELL, Correctional
Officer, in his individual capacity; J.
COFER, Lieutenant, in his individual
capacity,

Defendants - Appellees.

No. 13-7063
(D.C. No. 6:13-CV-00211-RAW-SPS)

ORDER

Before **KELLY, HARTZ**, and **BACHARACH**, Circuit Judges.

Plaintiff-Appellant Ma'aluum Abdullah, a/k/a Todd Cooks, seeks to appeal the district court's order overruling his objections to a magistrate judge's order requiring a special report pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978) and staying the district court case pending receipt of the *Martinez* report.

Except in certain limited circumstances, this court's appellate jurisdiction is limited to review of final decisions. 28 U.S.C. § 1291; *see also United States v. Nixon*,

418 U.S. 683, 690-92 (1974); *Albright v. Unum Life Ins. Co.*, 59 F.3d 1089, 1092 (10th Cir. 1995). A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute judgment.” *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 204 (1999) (internal quotations omitted). The district court’s order, which contemplates further proceedings upon receipt of the *Martinez* report, is not a final order. Nor has the district court certified its order for immediate appeal pursuant to 28 U.S.C. § 1292(b).

Certain interlocutory orders are immediately appealable under the collateral order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). To fall within this exception to the final judgment rule, the district court’s order must (1) have conclusively determined the disputed question, (2) have resolved an important issue completely separate from the merits of the case, and (3) be effectively unreviewable on appeal from a final judgment. *Crystal Clear Commc’ns, Inc. v. Sw. Bell Tel. Co.*, 415 F.3d 1171, 1178 (10th Cir. 2005). The order requiring a *Martinez* report in order to evaluate the merits of Abdullah’s claims, and staying proceedings pending receipt thereof, does not resolve an issue completely separate from the merits of the case, and, therefore, is not an immediately appealable collateral order. *Cf. id.* at 1179-80 (concluding that order staying federal case pending decisions by state and federal agencies was not immediately appealable under *Cohen* because it was not separate from the merits).

Because the district court’s order is not final and no exception to the final judgment rule applies, we lack jurisdiction to consider this appeal. Furthermore, we

decline to treat this appeal as a petition for a writ of mandamus. *See McClendon v. City of Albuquerque*, 630 F.3d 1288, 1298 n.3 (10th Cir. 2011) (declining to convert appeal into mandamus where the appellant's entitlement to the writ was not clear).

Appeal dismissed.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk